

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LEAR CORPORATION,

Plaintiff,

v.

NHK SEATING OF AMERICA INC.,

Defendant.

Case No. 13-cv-12937  
Honorable Laurie J. Michelson

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**ORDER ADOPTING SPECIAL MASTER'S REPORTS AND  
RECOMMENDATIONS [136, 137]**

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Plaintiff Lear Corporation holds five patents generally directed to headrests that move upon a front or rear impact to a vehicle. Lear claims that Defendant NHK Seating of America makes or sells products (or aids others in making and selling products) that are covered by some of the claims of these five patents. In particular, Lear asserts that NSA is liable for directly or indirectly infringing claims 14, 45, 49, 57, 62, 86, 90, and 94 of U.S. Patent No. 5,378,043; claim 15 of U.S. Patent No. 6,655,733; claims 4 and 17 of U.S. Patent No. 6,631,949; claims 1, 4, 5, 18, and 19 of U.S. Patent No. 7,455,357; and claim 2 of U.S. Patent No. 8,434,818.

In September 2018, NHK filed a motion for summary judgment, arguing that it did not infringe the asserted claims. (ECF No. 113.) Believing that NHK's summary-judgment motion raised "new theories of non-infringement" that were not part of NHK's Final Non-Infringement Contentions, Lear filed a motion to "strike NHK's new theories." (ECF No. 121, PageID.5102.)

After the motions were filed, the Court held two telephone-status conferences with the parties. (*See* ECF No. 131, 132.) Following those conferences, the Court decided that reappointing Retired Judge James F. Davis as special master would expedite resolution. (*See* ECF No. 133.) In

this Court's order reappointing Judge Davis as special master, the Court stated, "pursuant to the parties' agreement, each side is only permitted to ask (via objections) this Court to review two (or, if truly necessary, three) [summary-judgment] issues; for purposes of preserving an issue for appeal, the parties may object to any number of Judge Davis' findings." (ECF No. 133, PageID.5219.)

Judge Davis has issued two reports and recommendations on the two motions. (ECF No. 136, 137.) He recommends denying NHK's motion for summary judgment in full. (*See* ECF No. 136, PageID.5243.) And he recommends denying Lear's request to strike NHK's allegedly new infringement theories but permitting Lear to supplement its final infringement contentions in certain respects. (ECF No. 137, PageID.5246.)

Lear has filed no objections to either report and recommendation.

NHK objects to only Judge Davis' summary-judgment report and recommendation. (ECF No. 138.) NHK says that it "objects to each and every ruling in the Special Master Report that does not comport with the non-infringement positions advanced by Defendant." (*Id.*) NHK further says that it objects "to preserve its rights to appeal any and all aspects of the ruling." (ECF No. 138, PageID.5248; *see also id.* at PageID.5249 (reserving "rights to appeal any and all aspects of any ruling that the Court adopts from the Special Master Report that differs from the positions taken by Defendant").)

Apparently viewing NHK's objections as merely preserving issues for the Federal Circuit Court of Appeals, Lear has not responded to NHK's objections.

This Court too views NHK's objections as merely preserving issues for the Federal Circuit Court of Appeals. As noted, the Court contemplated that the parties would specify two or three summary-judgment issues for this Court's review. NHK's objections do not do that. So, it appears,

NHK's objections are for purposes of maintaining its non-infringement positions on appeal to the Federal Circuit.

Accordingly, and having reviewed both of Judge Davis' reports and recommendations, the Court hereby ADOPTS Judge Davis' two reports and ACCEPTS his two recommendations (ECF Nos. 136, 137).

SO ORDERED.

s/Laurie J. Michelson  
LAURIE J. MICHELSON  
UNITED STATES DISTRICT JUDGE

Date: August 19, 2019

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on the attorneys and/or parties of record by electronic means or U.S. Mail on August 19, 2019.

s/William Barkholz  
Case Manager to  
Honorable Laurie J. Michelson